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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

SAINT VINCENTS CATHOLIC MEDICAL CENTERS  
OF NEW YORK d/b/a SAINT VINCENT CATHOLIC  
MEDICAL CENTERS, *et al.*,

Debtors.

McDERMOTT WILL & EMERY LLP,

Appellant.

v.

SAINT VINCENTS CATHOLIC MEDICAL CENTERS  
OF NEW YORK, CREDITORS' COMMITTEE OF  
SAINT VINCENT CATHOLIC MEDICAL CENTERS OF  
NEW YORK and DIANA G. ADAMS, AS UNITED  
STATES TRUSTEE FOR REGION 2,

Appellees.

Chapter 11  
Case No. 05-14945 (ASH)  
  
(Jointly Administered)

**DESIGNATION OF RECORD AND STATEMENT  
OF ISSUES ON APPEAL PURSUANT TO FED. R. BANKR. P. 8006**

Appellant McDermott Will & Emery LLP ("McDermott") designates the following documents as the record and the following issues on appeal:

### **DOCUMENTS<sup>1</sup>**

1. Application to Entry of an Order Authorizing the Employment and Retention of McDermott Will & Emery LLP as Bankruptcy and General Corporate Counsel for the Debtors, dated July 5, 2005. [DE:12]
2. Interim Order Approving Employment and Retention of McDermott Will & Emery LLP as Bankruptcy and Corporate Counsel for Debtors and Debtors in Possession, dated July 14, 2005. [DE:107]
3. Final Order Approving Employment and Retention of McDermott Will & Emery LLP as Bankruptcy and Corporate Counsel for Debtors and Debtors in Possession, dated August 5, 2005. [DE: 259]
4. First Interim Application of McDermott Will & Emery LLP Pursuant to Sections 330(a) and 331 of the Bankruptcy Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure for Compensation for Professional Services Rendered and Reimbursement of Expenses Incurred on Behalf of the Debtors for the Period July 5, 2005 through September 30, 2005, dated January 31, 2006. [DE:1048]
5. Objection of the Official Committee of Unsecured Creditors to First Interim Application of McDermott Will & Emery LLP Pursuant to Sections 330(a) and 331 of the Bankruptcy Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure for Compensation for Professional Services Rendered and Reimbursement of Expenses Incurred on Behalf of the Debtors for the Period July 5, 2005 through September 30, 2005, dated March 3, 2006. [DE:1196]
6. Objection of the United States Trustee to First Interim Application of McDermott Will & Emery LLP Pursuant to Sections 330(a) and 331 of the Bankruptcy Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure for Compensation for Professional Services Rendered and Reimbursement of Expenses Incurred on Behalf of the Debtors for the Period July 5, 2005 through September 30, 2005, dated March 7, 2006. [DE:1221]
7. Reply to Objections of the United States Trustee and Creditors' Committee to Application of McDermott Will & Emery LLP Under 11 U.S.C. §§ 330(a) and 331 and Fed. R. Bankr. P. 2016 for Compensation and Reimbursement of Expenses July 5, 2005 through September 30, 2005, dated March 20, 2006. [DE:1282]

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<sup>1</sup> Once a District Court judge is assigned to this matter, McDermott will submit to the District Court and each of the parties hard copies of each of the items to be included in the record that were submitted to the Court but not previously filed on the CM/ECF system because of confidentiality concerns.

8. Scheduling Order Regarding Fee Application of McDermott Will & Emery LLP, dated April 10, 2006. [DE:1367]
9. Stipulation and Order regarding Discovery, dated April 19, 2006. [DE:1429]
10. Notice of Settlement of Proposed Order Authorizing and Directing Interim Compensation and Reimbursement of Expenses of Former Counsel to Debtors-in-Possession, dated June 2, 2006. [DE:1638]
11. Objection of the Official Committee of Unsecured Creditors to Proposed Order Under 11 U.S.C. § 331 Approving Interim Distribution to McDermott Will & Emery LLP, Former Counsel to Debtors-in-Possession, dated June 5, 2006. [DE:1639]
12. Amended Notice of Settlement of Proposed Order Authorizing and Directing Interim Compensation and Reimbursement of Expenses of Former Counsel to Debtors-in-Possession, dated June 5, 2006. [DE:1642]
13. Reply in (A) Support of Proposed Order under 11 U.S.C. § 331 Approving Interim Distribution to McDermott Will & Emery LLP, and (B) in Response to Creditors' Committee Objection, dated June 6, 2006. [DE:1648]
14. Order Under 11 U.S.C. § 331 Approving Interim Distribution to McDermott Will & Emery LLP Former Counsel to Debtors-in-Possession, dated June 14, 2006. [DE:1685]
15. Second Stipulation and Order Regarding Discovery, dated July 18, 2006. [DE:1898]
16. Second Scheduling Order Regarding Fee Application of McDermott Will & Emery LLP, dated July 18, 2006. [DE:1899]
17. Notice of Amendment of Application of McDermott Will & Emery LLP under 11 U.S.C. §§ 330(a), 331 and Fed R. Bankr. P. 2016 for Compensation and Reimbursement of Expenses (July 5, 2005 through September 30, 2005), dated July 21, 2006. [DE:1931]
18. Debtors' Response and Objection to First Interim Application of McDermott Will & Emery LLP for Compensation for Professional Services Rendered and Reimbursement of Expenses Incurred on Behalf of the Debtors for the Period July 5, 2005 through September 30, 2005, dated July 31, 2006. [DE:1971]
19. Reply to Debtors' Objection to Final Fee Application of McDermott Will & Emery LLP, dated August 25, 2006. [DE:2062]
20. Third Stipulation and Order Regarding Discovery, dated July 28, 2006. [DE:2077]
21. Stipulated Protective Order, dated August 29, 2006. [DE:2091]
22. Declaration of Michael B. Solow in Support of Application of McDermott Will & Emery LLP Under 11 U.S.C. §§ 330(a), 331 and Fed. R. Bankr. P. 2016 For Compensation and Reimbursement of Expenses [July 5, 2005 Through September 30, 2005], sworn to September 13, 2006.

23. Declaration of Thomas Allison in Support of Application of McDermott Will & Emery LLP Under 11 U.S.C. §§ 330(a), 331 and Fed. R. Bankr. P. 2016 For Compensation and Reimbursement of Expenses [July 5, 2005 Through September 30, 2005], sworn to September 14, 2006.
24. Affidavit of David D. Cleary in Support of Application of McDermott Will & Emery LLP Under 11 U.S.C. §§ 330(a), 331 and Fed. R. Bankr. P. 2016 For Compensation and Reimbursement of Expenses [July 5, 2005 Through September 30, 2005], sworn to September 15, 2006.
25. McDermott Will & Emery LLP's Motion in Limine under Fed. R. Evid. 802 to Exclude Comments of Honorable Prudence C. Beatty as Prejudicial Hearsay, dated October 13, 2006. [DE:2294]
26. United States Trustee's Objection to McDermott Will & Emery's Motion in Limine to Exclude Comments of the Honorable Prudence Beatty as Hearsay, dated October 17, 2006. [DE:2300]
27. Opposition of the Creditors' Committee to McDermott Will & Emery LLP's Motion in Limine Under Fed R. Evid. 802 to Exclude Comments of Honorable Prudence C. Beatty as Prejudicial Hearsay, dated October 17, 2006. [DE: 2301]
28. Debtors' Joinder to Opposition of Creditors' Committee to McDermott Will & Emery LLP's Motion in Limine under Fed. R. Evid. 802 to Exclude Comments of Hon. Prudence Carter Beatty as Prejudicial Hearsay, dated October 17, 2006. [DE:2302]
29. Affidavit of William P. Smith in Support of Application of McDermott Will & Emery LLP Under 11 U.S.C. §§ 330(a), 331 and Fed. R. Bankr. P. 2016 For Compensation and Reimbursement of Expenses [July 5, 2005 Through September 30, 2005], sworn to October 17, 2006.
30. Affidavit of Stephen J. Selbst in Support of Application of McDermott Will & Emery LLP Under 11 U.S.C. §§ 330(a), 331 and Fed. R. Bankr. P. 2016 For Compensation and Reimbursement of Expenses [July 5, 2005 Through September 30, 2005], sworn to October 17, 2006.
31. Affidavit of James M. Sullivan in Support of Application of McDermott Will & Emery LLP Under 11 U.S.C. §§ 330(a), 331 and Fed. R. Bankr. P. 2016 For Compensation and Reimbursement of Expenses [July 5, 2005 Through September 30, 2005], sworn to October 17, 2006.
32. Joint Pretrial Statement Regarding McDermott Will & Emery LLP Fee Application, dated, October 18, 2006.
33. Transcript of Hearing Held on October 18, 2006. [DE:2742]
34. Transcript of Hearing Held on October 23, 2006 [DE:2641]
35. Transcript of Hearing Held on October 24, 2006. [DE:2546]

36. Transcript of Hearing Held on October 25, 2006. [DE:2547]
37. Post-Trial Scheduling Order, dated October 26, 2006. [DE:2349]
38. Master Exhibit List, dated October 27, 2006. [DE:2336]<sup>2</sup>
39. Post-Trial Memorandum in Support of Final Fee Application of McDermott Will & Emery LLP Under 11 U.S.C. § 330, dated November 10, 2006.
40. Post-Trial Statement of Economic Consequences to Debtors' Estates Arising from McDermott, Will & Emery LLP's Services as Debtors' Counsel between July 5, 2005 and September 30, 2005 Submitted by the United States Trustee, Saint Vincents Catholic Medical Centers of New York d/b/a Saint Vincent Catholic Medical Centers, and the Official Committee of Unsecured Creditors, dated November 10, 2006.
41. Reply of McDermott Will & Emery LLP to Post-Trial Statement of Debtors, Creditors' Committee and United States Trustee Regarding Purported Economic Consequences, dated November 22, 2006.
42. Response of Debtors, Official Committee of Unsecured Creditors, and United States Trustee, to Post-Trial Memorandum of McDermott Will & Emery LLP in Support of Final Fee Application Under 11 U.S.C. § 330, dated November 22, 2006.
43. Notice of Delivery of Time Records of McDermott Will & Emery LLP and Objection to Asserted Transition Costs of Successor Counsel, dated July 19, 2007.
44. Response of Debtors, Official Committee of Unsecured Creditors, and United States Trustee to the Notice of Delivery of Time Records of McDermott Will & Emery LLP and Objection to Asserted Transition Costs of Successor Counsel, dated July 30, 2007. [DE:3491]
45. Decision on Objections To Application for Fees and Expenses, dated August 29, 2007. [DE:3628]
46. Order Sustaining, in Part, Objections to First and Final Application of McDermott Will & Emery LLP for Compensation for Professional Services Rendered and Reimbursement of Expenses Incurred on behalf of the Debtors for the Period July 5, 2005 through September 30, 2005 and awarding Final Compensation and Reimbursement of Expenses, dated September 21, 2007. [DE:3723]
47. Notice of Appeal to District Court Under 28 U.S.C. § 158(a)(1), dated October 1, 2007. [DE:3753]

### **ISSUES ON APPEAL**

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<sup>2</sup> Due to the voluminous nature of the exhibits, McDermott will submit hard copies of the exhibits, previously held by the Bankruptcy Court, to the District Court once a judge has been assigned to this matter.

1. Whether the bankruptcy court applied an erroneous legal standard and abused its discretion when it reduced McDermott's fee request.
2. Whether the bankruptcy court's findings were supported by the evidence.
3. Whether the bankruptcy court's findings were against the clear weight of evidence.
4. Whether the bankruptcy court disregarded substantial evidence in the record.
5. Whether the bankruptcy court's findings were contrary to the only evidence present in the record.
6. Whether the bankruptcy court clearly erred in finding that McDermott had failed to move for the closing of St. Mary's Hospital "within a reasonable amount of time" and without adequate preparation and attention.
7. Whether the bankruptcy court improperly disregarded McDermott's reasoned professional advice given to its client and its client's own conduct regarding the closing of St. Mary's Hospital.
8. Whether the bankruptcy court clearly erred in finding that McDermott mishandled the proposed retention of Speltz & Weis LLC.
9. Whether the bankruptcy court clearly erred in finding that the debtor's board of directors "terminated" McDermott's engagement "because of ... shortcomings in ... performance."
10. Whether the bankruptcy court clearly erred in finding that McDermott's brief investigation, at its client's request, of the creditors' committee's assertedly improper interference with management, was "unnecessary and inappropriate."
11. Whether the bankruptcy court improperly denied McDermott's motion in limine, dated October 13, 2006, to exclude the hearsay comments of the Honorable Prudence C. Beatty, Bankruptcy Judge, from the trial record.

12. Whether the bankruptcy court improperly applied the law to the facts in the record.

Dated: October 11, 2007  
New York, New York

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